UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

DUANE READE, INC.
Employer

- and - **Case No. 2-RC-22498**

ALLIED TRADES COUNCIL
Petitioner

- and -

LOCAL 340A, NEW YORK JOINT BOARD, UNITE
Intervenor

DECISION AND ORDER DISMISSING PETITION

Duane Reade, Inc., (the Employer) operates a chain of pharmacies and general merchandise stores throughout the metropolitan New York area, where it employs clerks, cahiers, pharmacists and supervisory and managerial personnel. Allied Trades Council, (the Petitioner) filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all employees employed at the Employer's facility located at One Remsen Avenue, Brooklyn, NY. A hearing on the petition was held before Gregory B. Davis, a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Local 340A, New York Joint Board, UNITE, (the Intervenor) intervened in these proceedings based upon a collective-bargaining agreement covering a large proportion of the employees encompassed by the petition, as discussed below. At the hearing, the only issue addressed by the parties concerned whether the collective-bargaining

agreement between the Employer and the Intervenor was a bar to the further processing of the petition. On March 10, 2003, I ordered that the record be reopened so that the unit which is represented by UNITE could be described on the record. In their submissions in response to my order, attorneys for each of the parties agreed that the unit represented by Intervenor is a multi-location unit. Based upon the record before me, I conclude that the employees employed at the Employer's One Remsen Avenue facility are part of the multi-store unit represented by Intervenor, and, as such, the petition seeks an election in a unit that is not appropriate. Accordingly, the petition must be dismissed.

Based upon the entire record [1] in this matter, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated and I find that the Employer, a Delaware corporation with an office and principal place of business located at 440 Ninth Avenue, New York, New York, is engaged in the operation of a chain of retail drug stores. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of one million dollars, and purchases and receives goods and material in excess of $50,000 directly from suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The parties also stipulated and I find that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

5. In its petition, as amended at hearing, the Petitioner seeks an election a unit of all full-time and regular part-time employees, including pharmacists, but excluding all assistant managers, guards and supervisors as defined in the Act employed by the Employer at its facility located at One Remsen Avenue, Brooklyn New York (also referred to as the Remsen Avenue store).

At the hearing and in their briefs, the parties focused on the following issues: (1) whether the collective-bargaining agreement effective by its terms from April 1, 2001 to September 21, 2002 (the "1999 Agreement") between the Employer and the Intervenor covered employees at the Remsen Avenue Store; and (2) whether the collective-bargaining agreement effective by its terms from April 1, 2001 to March 31, 2004 (the "2001 Agreement") between the Employer and the Intervenor, is a bar to the instant petition or a premature extension of the 1999 Agreement and thus without bar quality. The Employer and the Intervenor contend that the 2001 Agreement bars the instant petition. These parties claim that the 1999 Agreement was never applied to the Remsen Avenue employees, as it was abrogated by the 2001 Agreement.[2] Instead, the only contract at issue the 2001 Agreement because the Remsen Avenue employees actually worked under those terms and conditions. The Petitioner asserts that its petition was timely filed on January 22, 2002, a date that is between 90th and 60th day preceding the third anniversary the 1999 Agreement.

---

[1] Briefs were filed by counsel for the Employer and the Intervenor and have been duly considered.

[2] It appears that the 1999 Agreement ceased being in effect on April 1, 2001.

I have considered the evidence and the arguments presented by the parties on each of these issues. As discussed below, despite certain deficiencies in the record, I have concluded that the 2001 Agreement encompasses, by its terms, a multiple location unit and that the facility in question constitutes an accretion to that unit. I additionally find that the record does not establish any basis on which to disturb the historical multi-location unit. I find, therefore, that the unit sought by the Petition, consisting of a fragment of that unit, is not an appropriate unit for collective bargaining.

I. Overview of Operations

The record establishes that the Employer's Remsen Avenue facility, which is also known as Store # 305, commenced sales to the public for the first time on January 17, 2002. No testimony was presented at the hearing regarding how many employees work in the petitioned-for unit[3] or concerning the Employer's operations generally. Intervenor and Petitioner each have collective-bargaining agreements with the Employer and both agreements contain multi-location units.

II. The Collective-Bargaining History

The General Manager of the New York Joint Board, John Gillis, was the only witness called to testify at the hearing. In his capacity as General Manager, Gillis has the authority to enter into contracts on behalf of the Intervenor. He testified that he signed the 1999 Agreement (a multi-store contract) on behalf of the Intervenor. In that regard, pursuant to Article I ("Recognition and Union Security"), the stores covered by the contract are set forth in an appendix A. No such appendix, however, is affixed to the contract, which was entered into evidence. Gillis maintained that the 1999 Agreement was never applied to the Remsen Avenue store. No evidence was offered regarding the

[3] The petition states that there are 15 employees in the petitioned-for unit.

work performed by the employees in the unit covered by the multi-store contract or the work performed by the employees at the Remsen Avenue store.

On April 18, 2001, the Intervenor and the Employer entered into the 2001 Agreement. No testimony was offered regarding the parties' apparent decision to renegotiate the contract approximately 16 months prior to its expiration. Gillis testified that, by entering into the 2001 Agreement, the prior contract was nullified and the 2001 Agreement determined the terms and conditions for all Duane Reade employees. The recognition clause in the 2001 Agreement provides as follows:

> "The Employer recognizes the Union as the sole and exclusive bargaining agent for all clerks, pharmacy clerks and cashiers employed in the Employer's stores (refer to 'Appendix A')."

As was the case with the 1999 Agreement, this exhibit was entered into evidence as a joint exhibit without an "Appendix A" and no party herein sought to object to this exhibit as being incomplete or to seek to obtain the relevant supplementary documentation.

On January 17, 2002, the Remsen Avenue store opened to the public. On January 18, 2002, the Intervenor and the Employer signed an agreement that states, in relevant part, as follows:

> DUANE READE RECOGNITION AGREEMENT
> Appendix A – As of 1/18/02
> The Employer recognizes the Union as the sole and exclusive bargaining agent for all clerks, pharmacy clerks and cashiers employed in the Employer's stores located at: . . .

This document proceeds to list approximately 61 locations where the Intervenor has been recognized by the Employer, including the Remsen Avenue store (# 305). This document additionally provides as follows:

> It is further understood that the Employer will recognize the Union and this list of locations will be updated when the Union is able to sign the majority of workers in any of the company's unorganized stores.

On January 23, 2002, based upon a count of authorization cards occurring on January 18, arbitrator Roger E. Maher issued a certified the Intervenor as the collective-bargaining representative among the employees at the Remsen Avenue store.

Gillis testified that, after its execution, the 2001 Agreement was the only agreement that existed which covered Duane Reade employees represented by the Intervenor. According to Gillis, the 2001 Agreement set the terms and conditions for the employees at the Remsen Avenue store and the 1999 Agreement did not, at any time, apply to these employees. Gillis further testified that the wage increase and other benefits due under the 2001 Agreement were given to the employees in Remsen Avenue store.[4] No additional evidence was presented regarding whether the employees at the Remsen Avenue store share a community of interest with the employees at the other stores covered by the 2001 Agreement.

III. Analysis

The issue in the instant case is whether Petitioner seeks an election in an appropriate unit. As this location constitutes a single store location within a multi-store unit, the petitioned-for unit is not an appropriate unit for the purposes of collective bargaining.

Pursuant to a memorandum of agreement executed on January 18, 2001, it appears that the unit represented by Intervenor, including the petitioned-for facility, is comprised of approximately 60 store locations throughout the New York City area. I note that the agreement specifically contemplates the addition of other locations, if and when they are organized by the Intervenor. Under *Kroger Company*, 219 NLRB 388 (1975), these clauses become effective upon a showing that the union has attained majority support at the new location. The record discloses that on January 23, 2002, an arbitrator

certified Intervenor as the collective-bargaining representative among the employees at the Remsen Avenue store based upon a count of authorization cards occurring on January 18. As a result of this card majority, the employees at One Remsen Avenue were merged into the multi-location unit.[5]

The Board has held that it will not normally disturb an historical multi-location unit absent compelling circumstances. *Met Electrical Testing Company, Inc*., 331 NLRB 872 (2000), citing *Trident Seafoods*, 318 NLRB 738 (1995). The party challenging the historical unit bears the burden of showing that the unit is no longer appropriate. *Met Electrical*, supra. There is no evidence, insofar as it has been developed in the record before me, as to why the historical unit is not an appropriate unit. I additionally note that the Petitioner itself has a history of multi-location bargaining in this particular industry.

While the parties focused their attention on whether the 1999 agreement or the 2001 agreement applied to the new store and whether the petition was timely or not, I must first determine whether the petitioned-for unit is an appropriate unit. If the unit petitioned-for is not appropriate, I do not need to decide which contract is applicable and whether the petition was timely filed or barred by the contract bar doctrine. Only in the event the Petitioner had filed a petition for the multi-location unit would I be confronted with the contract bar issue. Based upon the record before me, and as I have concluded that the only appropriate unit here consists of those multiple locations covered by the collective-bargaining agreement between the Employer and the Intervenor, the single

---

[4] No evidence was presented regarding terms and conditions that the Employer set when the employees were hired.

[5] I additionally take administrative notice of the Decision and Direction of Election in Case No. 2-RC-22403 et al., issued on April 3, 2001, involving the same parties as appear herein. In that matter, I found both the Petitioner and Intervenor therein (UNITE and the ATC, respectively) historically have engaged in multi-location bargaining with respect to this Employer.

location wall-to wall unit sought by the instant petition[6] is not an appropriate unit for purposes of collective bargaining, and therefore[7]

ORDER

IT HEREBY IS ORDERED that the petition filed herein be, and it hereby is, dismissed[8].

Date at New York, New York
This 21th day of April, 2003

(s)_____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 420-1200

[6] The record is not sufficient for me to determine the number of pharmacy employees at this location. If Petitioner desires an election among these employees, such should be raised in a separate petition.

[7] Inasmuch as I find that the petitioned-for unit is not appropriate for the purposes of collective bargaining, I find it unnecessary to address the contentions of the parties relating to whether the 2001 Agreement is a bar to the instant petition or, conversely, a premature extension of the 1999 Agreement and without bar quality.

[8] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 5, 2003**.